

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.) PCB No. 03-191
) (Enforcement)
COMMUNITY LANDFILL COMPANY,)
INC., an Illinois corporation, and)
the CITY OF MORRIS, an Illinois)
municipal corporation,)
)
Respondents.)

NOTICE OF FILING

TO: Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11
Chicago, Illinois 60601

Charles F. Helsten
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Scott Belt
Scott Belt and Associates, PC
105 East Main Street
Suite 206
Morris, Illinois 60450

PLEASE TAKE NOTICE that on **OCTOBER 18, 2006**, the undersigned caused to be electronically filed with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, the **RESPONDENT COMMUNITY LANDFILL COMPANY, INC.'s RESPONSE TO COMPLAINANT'S MOTION FOR INTERLOCUTORY APPEAL**, a copy of which is attached and hereby served upon you.



One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 North LaSalle Street, Suite 2810
Chicago, Illinois 60610
(312) 642-4414

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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RESPONDENT COMMUNITY LANDFILL COMPANY, INC.'s
RESPONSE TO COMPLAINANT'S MOTION FOR INTERLOCUTORY APPEAL

Respondent COMMUNITY LANDFILL COMPANY, INC., ("CLC") by and through its attorneys LaRose & Bosco, Ltd. and pursuant to 35 Ill.Adm. Code 101.518, hereby responds to Complainant's Motion for Interlocutory Appeal, and in support thereof, states as follows:

1. In response to Hearing Officer Bradley Halloran's October 3, 2006 order granting CLC's Motion to Cancel Hearing (see Order, attached as Exh. A), the Complainant filed a Motion for Interlocutory Appeal on October 5, 2006. CLC was served with Complainant's motion via UPS Next Day Air on October 6, 2006. CLC's response to this motion is timely filed pursuant to Section 101.500(d) of the Illinois Administrative Code which provides that a party may file a response within 14 days after service. 35 Ill.Admin.Code 101.500(d).

4. In its Motion for Interlocutory Appeal, Complainant has not articulated the proper (or any) standard under which the Board is to review Hearing Officer Halloran's order. Consistent with Illinois law, a Hearing Officer's order is reviewed for an abuse of discretion. Joliet Sand and Gravel Co. v. IPCB, 163 Ill.App 3d 830, 833, 516 N.E.2d 955, 958 (3d Dist. 1987).

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

3. In reaching his decision, Hearing Office Halloran considered CLC's motion, Complainant's response and the City of Morris' response. (See Exh. A, p. 2). The Hearing Officer also heard oral argument and took the matter under advisement prior to rendering his decision to grant CLC's Motion. (See Exh. A, pp. 1-2).

4. Hearing Officer Halloran's Order contains the following relevant language:

"After reviewing the motion to cancel, the respective responses and taking the oral arguments into consideration, I find good cause to grant CLC's motion to cancel the hearing scheduled for October 24, 25, 26 and 27, 2006. Due to the issues that need to be addressed at the hearing on remedy, it appears imperative that Edward Pruim, as a financial officer of CLC, be present at the hearing and available to testify. Additionally, I find that CLC's request to cancel was not the result of CLC's lack of diligence."

(Exh. A, p. 2).

5. It is clear from the language in his order that Hearing Officer Halloran carefully considered the parties' submissions, and additionally, provided each party the opportunity to argue its respective positions prior to entering the order granting CLC's motion. Indeed, the Complainant does not even suggest in its Motion for Interlocutory Appeal that Hearing Officer Halloran abused his discretion.

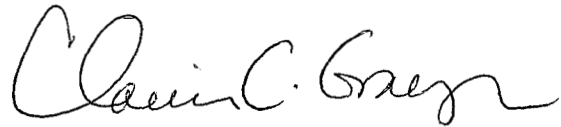
6. Furthermore, CLC's substantial compliance with the Board Procedural Rules is apparent. It is common sense that due to the nature of Mr. Pruim's illness, it was impossible to propose a date to reschedule the hearing. The Hearing Officer's order set a status date in this matter for December 7, 2006. Again, the Complainant has not suggested that Hearing Officer Halloran's actions even constitute an abuse of discretion in this regard.

7. The Board should resist the Complainant's suggestion that it substitute its judgment for that of Mr. Pruim's physicians. His critical medical condition, as identified by his two primary physicians, required postponement of the scheduled hearing.

8. If the Board required this matter to go to hearing this month, Mr. Edward Pruim would be unable to testify which would result in reversible error.

WHEREFORE, based on the foregoing, Respondent Community Landfill Company, Inc. respectfully requests that the Illinois Pollution Control Board DENY Complainant's Motion for Interlocutory Appeal.

Respectfully submitted,

A handwritten signature in cursive script, reading "Clarissa C. Grayson".

Attorney for Community Landfill Company

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60601
(312) 642-4414

CERTIFICATE OF SERVICE

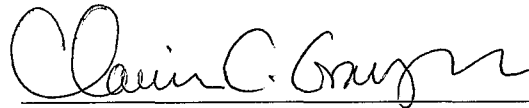
I, Clarissa C. Grayson, an attorney hereby certify that I caused to be served a copy of the foregoing **RESPONDENT COMMUNITY LANDFILL COMPANY, INC.s' RESPONSE TO COMPLAINANT'S MOTION FOR INTERLOCUTORY APPEAL** by placing same in first-class postage prepaid envelopes and depositing same in the U.S. Mail Box located at 200 North LaSalle Street, Chicago, Illinois, this 18th day of **October 2006**, addressed as follows:

Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Scott Belt
Scott Belt and Associates, PC
105 East Main Street
Suite 206
Morris, Illinois 60450

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One of the Attorneys for Community Landfill Co.

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OCT 03 2006

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

October 3, 2006

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

PCB 03-191

(Enforcement – Land)

COMMUNITY LANDFILL COMPANY,)

INC., and CITY OF MORRIS, an Illinois)

municipal corporation,)

Respondents.)

HEARING OFFICER ORDER

On February 16, 2006, the Board granted complainant's motion for summary judgment and directed that this matter proceed to hearing on the issue of remedy. One of the issues involved the respondents' failure to comply with the financial assurance requirements. Both City of Morris (Morris) and Community Landfill Company Inc. (CLC) filed respective motions for reconsideration. On June 1, 2006, the Board affirmed its order of February 16, 2006, granting complainant's motion for summary judgment and again directed that this matter proceed to hearing on the issue of remedy.

On September 22, 2006, respondent CLC filed a motion to cancel the hearing previously scheduled for October 24, 25, 26, and 27, 2006. On September 27, 2006, the complainant filed a response objecting to CLC's motion to cancel the hearing. On September 28, 2006, respondent City of Morris (Morris) filed its response to both CLC's motion to cancel the hearing and complainant's response in opposition. A telephonic status conference was held on September 28, 2006, where oral arguments were entertained. After considering the oral responses and reading the written motions and responses, the hearing officer orally notified the parties on September 28, 2006, that CLC's motion to cancel the scheduled hearing was granted. Today's order grants the motion and cancels the hearing.

CLC Motion To Cancel Hearing

CLC represents in its motion that Edward Pruim, the secretary and treasurer of CLC, underwent emergency quintuple bypass surgery that was complicated by the presence of an aortic aneurism. Edward Pruim was hospitalized from August 26, 2006 to September 9, 2006. Edward Pruim was readmitted to the hospital on September 11, 2006, with a blood clot on his lung. Pruim was released on September 17, 2006. Finally, CLC represents that Edward Pruim is recovering at his home and is receiving continued treatment for the blood clot and heart condition.



CLC's attachments to its motion include an affidavit from CLC's attorney and letters from Dr. Daniel Rowan, Edward Pruim's cardiologist and Dr. Timothy Wollner, Edward Pruim's family physician. Both physicians state that Edward Pruim should not undergo any stressful work-related activities for at least five to six months. The prohibited activities would include any participation by way of testimony or preparation for the hearing. Finally, both physicians recommend that Edward Pruim's physical condition be reviewed again in March 2007, to ascertain whether he can partake in a hearing.

Complainant's Response In Opposition

Complainant argues that CLC's motion to cancel the hearing should be denied because Edward Pruim is not a party to this matter, and has no involvement in the prosecution of this matter. Complainant represents that Edward Pruim has yet to be disclosed as a witness and that CLC's claim that Edward Pruim testimony is necessary is a revelation. Finally, complainant argues that Edward Pruim's brother, who is the president of CLC and has been disclosed as a witness, would be able to provide all the necessary assistance to CLC. Complainant continues and states that since the financial assurance documents for the landfill reveal that financial assurance was arranged by R. Michael McDermont, Mark A. LaRose and Robert Pruim, Edward Pruim's testimony is not necessary.

Morris' Response To CLC's Motion To Cancel And To Complainant's Response

Morris argues that it would be prejudiced if the hearing is not canceled and continued until such time as Edward Pruim can be compelled to testify. Morris argues that since Edward Pruim is the treasurer and chief financial officer of CLC, and since post-closure matters relate to financial issues at issue here, it is essential that Morris be allowed to question Edward Pruim. On October 2, 2006, Morris filed a witness list pursuant to the August 17, 2006 hearing officer order. Edward Pruim is listed as one of the witnesses. Finally, Morris represents that preliminary closure activities have been initiated at the site and represents, as reflected in the attached deposition of expert witness Devin Moose, that based upon the current status of activities at the site, no eminent or substantial threat to the human health and environment is posed by the site in question.

Discussion

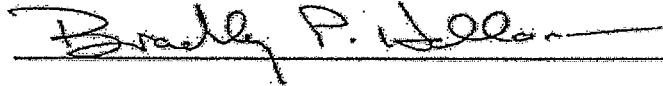
After reviewing the motion to cancel, the respective responses and taking the oral arguments into consideration, I find good cause to grant CLC's motion to cancel the hearing scheduled for October 24, 25, 26, and 27, 2006. Due to the issues that need to be addressed at hearing on the issue of remedy, it appears imperative that Edward Pruim, as a financial officer of CLC, be present at the hearing and available to testify. Additionally, I find that CLC's request to cancel was not the result of CLC's lack of diligence.

Telephonic Status Conference

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on December 7, 2006, at 11:00 a.m. Please note the

time change. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

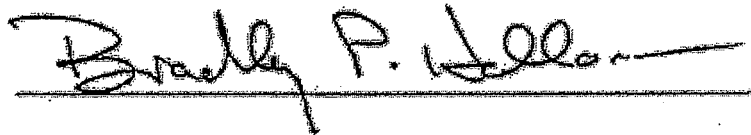
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 3, 2006, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 3, 2006:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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Chicago, Illinois 60601
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PCB 2003-191
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